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February 7, 2012

Arizona Corporation Commission
Attention: Docket Control
1200 West Washington
Phoenix, AZ 85007

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

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RE: Docket No. T-02115A-11-0449 – Response to Verizon's Objections to Proposed Tariff Revisions of Navajo Communications Company

Dear Sir/Madam:

Navajo Communications Company, Inc. ("Navajo") filed tariff language on December 15, 2011 in its Arizona state access tariff which incorporated changes ordered by the Federal Communications Commission ("FCC") in its November 18, 2011, *Report and Order and Further Notice of Proposed Rulemaking*.¹ Pursuant to the FCC Order, the revised tariff language provided that Navajo would assess rates equal to interstate switched access rates on all toll VoIP-PSTN traffic that it terminated.

On January 30, 2012, Verizon filed a letter taking issue with the substance of Navajo's tariff filing, asserting that the FCC required the "application of rates not higher than interstate switched access rates to both originating and terminating VoIP-PSTN traffic".² Verizon asked the Commission to require Navajo to revise and re-file its tariff to comport with Verizon's interpretation of the FCC Order. In short, Verizon asks the Commission to require Navajo to reduce the originating intrastate access rates applicable to certain intrastate PSTN-originated traffic on Navajo's network.

Navajo disputes Verizon's interpretation of the FCC Order and urges the Commission to swiftly reject Verizon's request.

The FCC was clear in its Order that it was not requiring reductions in originating access rates at this time. The FCC stated that it was "limiting reform to terminating access charges at this time"³, and noted its intent to "further evaluate" other charges such as originating access at a later date⁴. The FCC explicitly noted that it could not take action on originating access because there was an insufficient record to do so. Accordingly, in the FNPRM, the FCC "seek[s] comment on that final transition for *all* originating access charges,"⁵ which would necessarily include the access charges associated with calls that originate on the PSTN and terminate in VoIP.

The FCC took pains to preserve the status quo for originating access rates for calls originating on the PSTN while it develops a record on appropriate transition and recovery mechanisms for these charges in the further rulemaking. The parts of the Order capping and continuing intrastate access rates for the interim do not note any exception for traffic originated on the PSTN and terminated via VoIP.⁶ Moreover, the only portion of the Order's VoIP-PSTN

¹ *In re: Connect America Fund, et. al, Report & Order and Further Notice of Proposed Rulemaking*, FCC 11-161 (rel. Nov. 18, 2011) (*Report & Order and FNPRM*).

² Letter from Donald Eachus, Director State Government Affairs, Verizon, to Arizona Corporation Commission Docket Control (Jan. 30, 2012).

³ *Report & Order and FNPRM* at ¶ 739.

⁴ *Id.* "[W]e address those elements in the FNPRM." (that is, a Future Notice of Proposed Rulemaking).

⁵ *Id.* at ¶ 1298 (emphasis added).

⁶ *Id.* at ¶ 818. "[W]e take immediate action to cap all interstate originating access charges and intrastate originating access charges for price cap carriers. Although we *do not establish the transition for rate reductions* to bill-and-keep in this Order, we *seek comment in the FNPRM on the appropriate transition and recovery mechanism for ultimately phasing down originating access charges*. . . . A cap on interstate originating access represents a *first step* as part of our measured transition toward comprehensive reform. . . ." (emphasis added).

discussion that addresses originating access rates with any specificity (*which is the single paragraph cited by Verizon in its letter*) itself acknowledges that originating access rates are "subject to the phase-down and elimination of those charges pursuant to a transition to be specified in response to the FNPRM"⁷— in other words, there is no intent to flash-cut these rates to interstate levels in the present Order, particularly when the Order does not even make any recovery available for these lost revenues. The intrastate originating access rate reductions that Verizon seeks are clearly beyond what the FCC intended.

Indeed, accepting the Verizon position would have the effect of creating new arbitrage opportunities out of an Order that was intended to eliminate such gaming of the system. There has never been any dispute about originating access charges that terminate on VoIP, though Verizon's interpretation would create one. Navajo knows the jurisdiction of the traffic that originates on its network, but cannot determine how a call terminates—on the PSTN or via VoIP. As a result, Navajo would be forced to rely on another carrier's specified percentage of VoIP-terminated traffic in a situation where the carrier has the incentive to inflate its actual percentage of VoIP traffic. A disparity in originating rates for intrastate traffic terminating on the PSTN versus on an IP network would incent an interexchange carrier such as Verizon to specify a larger percentage of VoIP-terminated traffic to minimize their cost. The creation of such a situation should be avoided, especially as the FCC does not set a timeframe for addressing originating traffic, so the arbitrage opportunity would continue in perpetuity until further FCC action.

The FCC is currently considering this exact issue, as Navajo's parent company Frontier Communications has filed, along with other parties, seeking clarification of this point.⁸ It would be premature for the Commission to decide this issue prior to the FCC issuing further clarification. Navajo urges the Commission to reject Verizon's requests and leave unchanged Navajo's tariffs as filed, and to promptly become effective.

If you have any questions or need additional information please contact me at (916) 686-3570 or via email at Charlie.Born@ftr.com.

Sincerely,



Charlie Born
Manager, Government & External Affairs

cc: Docket Control (Original and 13 copies)
Service List

⁷ *Id.* at ¶ 961, n. 1976.

⁸ See Petition for Reconsideration and/or Clarification of Frontier Communications Corp. and Windstream Communications, Inc., CC Docket No. 01-92, *et al* (filed Dec. 29, 2011).